IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1870 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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GOPALBHAI DALPATBHAI TAILOR - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MS TEJAL VASHI FOR MR VH DESAI for the Petitioner
MS REETA CHANDARANA, A.G.P. for Respondent No.s 1 to 4.
MS. KRUTI M SHAH for Respondent No.5

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 17/03/2006

ORAL JUDGMENT

1. Rule. Ms. Reeta Chandarana, learned Assistant Government Pleader waives notice of Rule on behalf of respondent Nos. 1,2,3 and 4. Ms. Kruti Shah, learned Advocate waives notice of Rule on behalf of respondent

No.5.

2. In the present petition, the petitioner has prayed for being paid retiral dues like pension, gratuity etc. During the pendency of the petition, the petitioner has received his retiral dues. The only question that remains is with respect to interest on delayed payment.

2.1 The petitioner who was working as a Principal in a recognized aided Primary School, opted for voluntary retirement. He was permitted to retire on voluntary retirement basis with effect from 03.01.1985. Though at one stage the petitioner tried to resile from his request for being permitted to retire on voluntary retirement basis, his application for the said purpose before the Education Tribunal did not succeed. The petitioner was therefore, taken to have been validly retired with effect from 03.01.1985. The said order was passed by the Education Tribunal on 12.02.1990. It is the case of the petitioner that since he is treated to have been retired with effect from 03.01.1985, he is entitled to receive all post retiral benefits. The respondents consumed considerable time in paying pension and other benefits to the petitioner. The petitioner therefore, filed this present petition. With respect to benefits other than the

pensionary benefits, the petitioner has not raised any dispute during the oral submissions made before this Court. Ms. Tejal Vashi, learned Advocate for the petitioner submitted that the pensionary benefits of the petitioner were released in December 2004. She therefore, submitted that the said amount should carry appropriate interest to the extent of delay.

2.3 Learned Advocate for the petitioner further agreed that the petitioner himself had settled down in Canada and living with his family. It was only in the year 1996, the petitioner approached the authorities for releasing his pension and other retiral benefits. She therefore, agreed that till the year 1996, atleast the petitioner may not receive interest on the delayed payment of pension. She has also submitted that so far as the other post retiral benefits are concerned, the petitioner received the same without much delay on the part of the respondents. She therefore, confined her prayer for interest on the delayed payment of pension after 1996.

3. The respondents have filed affidavits and opposed the petition. Respondent No.5 in particular has filed a

detailed reply dated 13.03.2006. In the said reply, details have been given regarding the stages through which the pension papers of the petitioner were passed before finally his pension came to be paid. It is pointed out that the petitioner approached school authorities on 06.02.1996. In the said letter itself, the petitioner has stated that he is staying in Canada since last eight years, on account of which he could not produce documents for payment of his pension. It is therefore, contended that atleast for the period prior to February 1996, there would be no question of paying any interest on the delayed payment of pension. Additionally, it is pointed out that the school authorities have always taken prompt steps to see that the pension papers of the petitioner are processed earlier. It is also pointed out that in August 1996, the Government authorities wrote a letter to the District Education Officer with a copy to Respondent No.5 School raising three queries with respect to pension case of the petitioner.

3.1 It is pointed out that the school authorities immediately replied on 07.11.1996 with respect to queries raised by the authorities. Through correspondence produced along with affidavit, it is sought to be

suggested that the school management is in no way responsible for causing any delay in payment of the petitioner. On the basis of affidavit-in-reply produced on record, it was contended by Ms. Shah that no interest on the delayed payment of pension can be payable to the petitioner, since the petitioner himself had once again left for Canada and approached the school authorities only in May 2003. It was contended that whereabout of the petitioner were not known and that therefore, it was difficult for the school authorities to make correspondence with the petitioner. In any case his attendance was necessary for satisfying the queries of the Government authorities.

4. Ms. Reeta Chandarana, learned Assistant Government Pleader for the Government submitted that the petitioner approached the authorities for the first time in the year 1996 and thereafter, also did not satisfy the queries raised by the authorities to finalise his pension case. She submitted that the authorities asked for certain documents, which the petitioner ought to have been supplied. On account of non-supply of such documents, pension case of the petitioner could not be finalised.

5. Having heard the learned Advocates appearing for the parties, it is clear that the petitioner opted for voluntary retirement with effect from 03.01.1985. At some stage he tried to urge before the authorities and thereafter before the Education Tribunal, that he had withdrawn his notice of voluntary retirement before the same had become effective and that therefore, he should have been permitted to withdraw the notice of voluntary retirement. His plea however, did not succeed and the Education Tribunal rejected his case on 12.02.1990. Whatever be the outcome of the request of the petitioner to permit him to withdraw his voluntary retirement notice, the respondents ought to have taken up his case for pensionary benefits and other post retiral benefits, since the stand of the respondents was that he was validly retired with effect from 03.01.1985. Therefore, even without the petitioner asking for pensionary benefits, the same ought to have been made available to him. In any case, the petitioner lost his case before the Education Tribunal on 12.02.1990, and the stand of the respondents was upheld the respondents ought to have released post retiral benefits of the petitioner. Apparently, no steps were taken to process the pension papers of the petitioner till he returned from Canada and

requested the authorities to pay him the pension and other retirement benefits from February 1996. It is true that the petitioner himself did not apply for pension and other retiral benefits till that date. However, pension is right of employee who is covered by pensionary scheme and has rendered long meritorious and pensionable services, in return of which in appreciation of his services, the pension is to be paid to him. However, in the present case, since the petitioner himself had to supply certain details before his pension could be finalised and he was admittedly not available till February 1996, the learned Advocate for the petitioner rightly not pressed for the interest prior to said period. However after February 1996, I do not find any excuse for the respondents not to process and finalize the pension papers of the petitioner promptly. Even if there were some queries, the same should have been raised promptly and the response from the petitioner should have been called for. In fact the queries raised by the Government on 05.08.1996 was more for the school management and the Government to sort out. If one looks at the queries raised, it would appear that the first requirement was for production of certificate of voluntary retirement. The original of such certificate

would be available with the school authorities as well as Government authorities. The petitioner could not have been and was not in fact asked for the same. Second query was with respect to certificate to be produced as per Government Resolution dated 26.08.1971. This was the internal matter with the school authorities and the Government. Third question was with respect to correct date of retirement of the petitioner. This was readily available with the school authorities and any input from the petitioner was not required. In any case, the school authorities pointed out that this query was promptly answered by the school and it was pointed out that the certificate is available on record and other queries were also supplied immediately.

7. Despite above position the petitioner did not receive pension for years together. I cannot see how any blame cane be attached to the petitioner in finalisation of his pension after February 1996. It was sought to be contended that the petitioner had once again left for Canada and was not available for fulfilling certain requirements. It was suggested that the respondents did not have the address of the petitioner to contact him. Firstly, the authorities ought to have put all questions

to the petitioner at one time and raising series of queries through different communication would be highly unjust, particularly, when the petitioner was not residing as a permanent resident in India. Even otherwise there is no material on record to suggest that the respondents did not know the whereabouts of the petitioner.

8. Considering all these aspects of the matter, I find that the petitioner should receive interest on the delayed payment of pension. Considering that the petitioner retired way back in the year 1985 but approached the authorities for payment of pension only in February 1996, six months would be reasonable time to permit the respondents to put their act together and finalise the pension case of the petitioner. Beyond the said period the delayed payment of pension shall carry interest.

9. In the result, it is directed that the delayed payment of pension to the petitioner shall carry simple interest at the rate of 7% per annum from August 1996 to the extent of delay, beyond the said period of August 1996 till actual payment, I have expressed no opinion on

question as to who is responsible for delay i.e. School Management or the Government. It will be the issue between the school management and the Government authorities to decide outside of this litigation. The Government authorities shall release interest as ordered hereinabove within a period of three months from the date of receipt of a copy of this order.

10. With these directions the petition is disposed of. Rule is made absolute to the above extent. No order as to costs.

[Akil Kureshi, J.]

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